

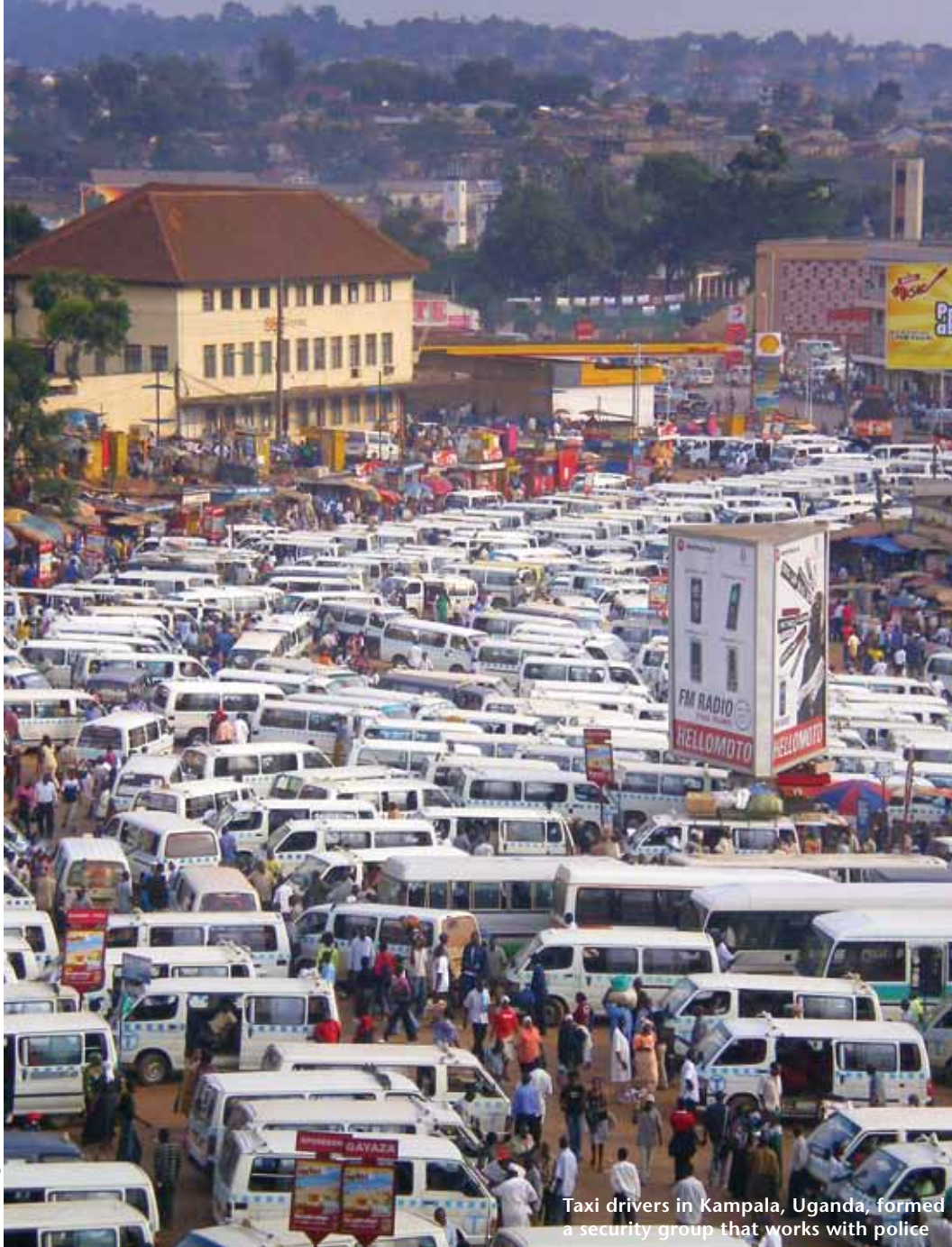
# Law Enforcement Capacity-building in African Postconflict Communities

BY BRUCE BAKER

**P**ostconflict is, unfortunately, not always a suitable descriptor of societies where a peace agreement has been signed and a transitional government installed. Violence does not stop on the day of the public signing of the treaty. Large numbers of unemployed and (in the short term) unemployable youths, often armed or with access to arms, loiter on the streets. They have had little opportunity to gain education in the preceding years, but have learned that violence is the key to accessing resources and status. The former security forces or informal armed groups and militias that they have been part of have, over many years, provided a whole range of roles: social support group, family, employer, provider, escape ladder from rural poverty, and source of status. Hence, whether these groups are officially disbanded or not, the youths look to their former general-patron and their ex-fighting colleagues as their surrogate “clan” in times of trouble. Violence may well live on in their minds, dreams, responses to conflict resolution, attitudes toward women, and methods of securing resources. No wonder, then, that the crime rates escalate in the cities where they now live, and no wonder that some militias remain in the countryside, looting and robbing, despite the official end of the war.

In such a postconflict environment, I recommend that serious consideration be given to the role that nonstate law enforcement actors can have. I do so against a background of increasing interest by policy think tanks and donors in the role of local law enforcement groups in delivering safety and

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Taxi drivers in Kampala, Uganda, formed a security group that works with police

justice for the poor.<sup>1</sup> When I mention *nonstate actors*, the first thing that comes to mind for many is the young men whose militias and armed groups originally created the insecurity. The response is a quick dismissal of the idea that such people could provide law enforcement and defend the new order. But this is not what is being suggested.

In the immediate aftermath of conflict, the main security issues for most people will not be armed groups murdering people and burning property, but rather criminals robbing people, raping women, and committing similar crimes. The chief concerns in surveys of postconflict societies are invariably criminal issues that require police, not insurgency issues that require self-defense

forces. For instance, a survey of “security-related problems” by the North-South Institute in Southern Sudan found that in 2009, 4 years after the Comprehensive Peace Agreement, people’s biggest concerns were theft (59 percent), burglary (22 percent), and abduction of girls and women/forced marriage (22 percent).<sup>2</sup> Likewise in Liberia, statistics from the United Nations Mission in Liberia indicate that robbery (including armed robbery), murder, and rape constituted the most pervasive crimes.<sup>3</sup>

When I suggest, therefore, that nonstate actors might have a part to play in crime prevention and investigation in the postconflict state, those under consideration are not militias and self-defense units. I have in mind using local law enforcement groups. Typically, a wide range of local policing and law enforcement entities are found in postconflict developing countries. In Africa, at least, there are likely to be private citizen groups organized on a voluntary, ad hoc basis (locally called *vigilances* or *vigilante groups*, though these terms do not necessarily have the negative aspects conveyed in the West); security groups organized by and for the benefit of trading communities such as markets and taxi drivers; security structures at the village or city neighborhood level authorized by the police to provide everyday policing; customary chiefs who prevent or resolve civil and criminal cases; religious police (especially Islamic) overseeing moral conduct; and restorative justice community-based organizations.

Let me give two illustrations. First, let us consider the Uganda Taxi Operators and Drivers Association (60,000 members with 10,000 minibuses), which polices the bus parks noted as crime hot spots. In Kampala, it has a 100-member-strong traffic warden department that works with the police and has responsibility for resolving disputes between drivers

or between drivers and passengers, preventing pickpocketing, enforcing traffic regulations by taxi drivers, and assisting the police in directing traffic at rush hour. Second, let us take a peace monitoring nongovernmental organization (NGO). In Sierra Leone, some communities in the south have established mechanisms for the peaceful resolution of conflicts. Bo Peace and Reconciliation Movement is a coalition of 11 community groups working on peacebuilding, reconciliation, and crime prevention in the Bo district. Its 20 local Peace Monitors resolve hundreds of conflicts each year, such as family matters, fighting, land cases, and leadership issues. Their work has reduced community conflict and litigation cases in the local courts and has helped many ex-combatants reintegrate into communities.

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These are the sorts of groups that arise (or rise again) from the ashes of war to undertake law enforcement and justice services. They are active in urban areas off the tarmac road where the police rarely go. They are also active in rural communities that are miles from the nearest police station. Though their motives may be mixed, a significant element of their motivation comes from a desire to assist their own communities. It is the success or failure of *these* groups that will determine the level and quality of law enforcement and justice for most people in the generation following conflict.

Many imagine that nonstate policing is always autonomous and lawless. This is far from the case; such groups may in fact be

linked to the state, either formally or, more likely, informally. In other words, state and nonstate law enforcement and justice are not always clearly separated and distinct. It is true that there are plenty of examples of nonstate policing agencies acting without any reference points—whether the state, chiefs, or local community. However, it is equally true that there are many examples of law enforcement and justice activities that are shared across the state/nonstate boundary. Some law enforcement groups realize that there is much to gain from tapping into the knowledge, skills, resources, and prestige of others so as to achieve their own agendas. The recognition of capital in others draws providers together into law enforcement and justice networks. It is no surprise, then, that many instances can be found at the local level of state and nonstate actors carrying out joint patrols and operations or exchanging information about crime and criminals.

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There are also cases of community-based groups and state police sharing and dividing security requirements according to whose *modus operandi* is best suited for a particular task. The state may provide nonstate law enforcement groups with equipment or training, or it may grant them formal recognition, which determines their role and authority as chiefs or elected law enforcement officials in their locality. The boundary between state and nonstate/local is blurred and is repeatedly negotiated and revised. The term *nonstate groups*,

therefore, does not fully characterize those that are so called. In fact, many do have some degree of authorization by certain levels of the state and do undertake the state's law enforcement business. The thread running through such groups is not so much that they have nothing to do with the state, but that they are *local* law enforcement and justice providers enforcing the locally prevailing defined order and using locally recruited volunteers.

These local providers differ from militias in important ways. They are for the most part unarmed (and if not, should be required to be so); they are local rather than regional in their area of operation; they are narrow in their focus, tackling the everyday disputes and disturbances that affect the neighborhood or workplace; they tend to be more homogenous than militias and thus more cohesive, stable, and predictable; and, being small, they rarely attract takeover by a “big man” with serious regional or national political ambitions. Together, these factors mean that they are less prone to commit serious violence and crime, less likely to be able to ignore their local communities' wishes, and less vulnerable to manipulation for political/ethnic ends.

It is these groups that offer law enforcement and justice for the next generation (or longer), during which time the underresourced state will be struggling to establish a nationwide state policing and justice alternative. Supporting them is not about privatizing security so that it is turned over to major commercial security companies, or about backing gross human rights abusers. It is about helping those civic-minded groups who are active on the ground providing services for their own communities for little or no reward. It is about supporting providers who do not have expensive training and equipment needs and who



refuse to fail because resources were not available from the central government to sustain them. It is about assisting those who, for all their failings to live up fully to international standards (as the police forces of their own country), are often, nevertheless, to a degree supported by and accountable to most of their communities (otherwise, it would be difficult to operate).

No one suggests that all local groups are worth engaging. Everyone has a horror story of a vigilante group that abused the local people that it said it was defending. The challenge is to distinguish between the “reformable” and the “beyond reform” and to discover those who do offer potential for support. This means a mapping of the law enforcement groups in an area, an assessment of their characteristics, an evaluation by users, and a stakeholder analysis to determine potential winners and losers from any intervention. Following those processes, an initial selection process might short-list groups that are locally acceptable (to a majority of all sectors of the community), nonexclusionary (especially in regard to minorities), not perceived by the local community as criminal/extortive, and open to dialogue about change.

To consider supporting nonstate law enforcement and justice groups entails remembering that a public good is not to be thought of as a synonym for a good provided by the state or one available nationwide. A public good can apply to a nonexclusionary service provided to all within a more localized context. Public goods and services can be and are provided by nonstate actors to their communities. Too often, the public/private service divide is seen as, on the one hand, services provided free by the state to all citizens according to certain standards; and, on the other, services offered to

those who can pay since they are for the profit, and in the interest, of the providers. *Public* is assumed to be universal and free; *private* is seen to be localized and costly, thus excluding the poor. This is a travesty of reality in law enforcement and justice in most of the world. No one who knows anything of African police forces would describe their services as offered to all citizens and made available freely without discrimination or favor. And an objective account

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of nonstate law enforcement and justice providers would not find them all self-regarding and serving only private and largely elite interests. Rather, many would be found to be universally available to their local public irrespective of status and power and offered at minimal or no cost to the user.

Another objection to supporting nonstate actors is that it would promote fragmentation, inconsistency, problems with control, loss of economies of scale, and conflict between rival groups. To “let a thousand flowers bloom,” it is said, would lead to every hamlet having its own form of policing. Though it is acknowledged that heterogeneity is a problem for the centralizing state and its ruling class, it is not so problematic to the local people on the ground, according to a recent report on Southern Sudan.<sup>4</sup> The study argues that the strength and popularity of local law enforcement and justice stem from the fact that they are “tailored to the perceptions and needs” of local people. The variation not only between localities but also within localities is exactly what makes it

successful in the eyes of Sudanese users: “Each case is negotiated, argued and bargained out to come to a conclusion that is by no means predictable on the basis of the bare bones of the case.”<sup>5</sup> In an adversarial context, where there are winners and losers according to statutory law, such uncertainty sounds threatening. But in a context where people are seeking a reasonable settlement in a given situation, looking for compensation, and perhaps wanting an appropriate punishment in the circumstances, it makes eminent sense. It is a desire that law enforcement and justice agents understand the individual circumstances and timing of events and the customs *that apply locally*. Individualized justice and security is shaped according to context and the need of the individuals concerned.

To make the actual providers of local law enforcement better at their task, I suggest five strategies.

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**Developing leadership.** Trying to eliminate from nonstate/local groups all those who have committed human rights abuses in the preceding conflict is unrealistic. Most, if not all, eligible local young men are likely to have taken part in abuses by the state security forces or the armed groups and militias. And any vetting process requires local knowledge and the unlikely assumption that people have not moved around during the war. But leaders of local law enforcement and justice groups that are seeking to serve the community of their locality or

workplace are not fools. Illiteracy does not equal incompetence. They do not want “hoodlums” and drunks patrolling with them or adjudicating cases with them. These leaders know who they are recruiting, and they are the ones who have to be trusted to discipline their recruits. As men with smaller ambitions than militia leaders, these leaders seek local recognition and status. If they want the support of the locality that they claim to be serving, they will have to rein in the delinquents. Thus, much depends on having the best possible leadership in place.

Leadership is something that can be strengthened from outside through encouragement, example, a little practical assistance, and perhaps training. First, leaders can be made aware of constitutional and legal requirements (for example, regarding the proscription of violence). Second, they can be given accreditation and practical rewards (for example, flashlights) for learning, achieving, signing an undertaking not to use violence, and offering the local community regular meetings to report back and listen. This is a strong motive for those who are more interested in recognition than equipment. When asked what sort of help would he like to pursue his justice work, one chief in Southern Sudan requested a bicycle and a sash to cover his torn T-shirt—in other words, primarily, he wanted no more than official recognition that his efforts to serve so many different villages was appreciated. Third, consistency could be helped by gathering leaders into an association or at regular conventions to compare approaches (for example, the chiefs of a given area could compile customary law precedents in casebooks that would be used by all). This practice could also facilitate the development and adaptation of customary law. Fourth, nonstate actors are often good at conflict



UN (Staton Winter)

Liberian flag hangs at entrance of magisterial court in Nimba County

resolution, but some might value specific training in conflict/dispute resolution. Last, performance would be enhanced by regular visits to leaders and their communities by an association of their own or by a state agency for the purpose of monitoring/answering questions (and a phone hotline for both, as long as the lines are properly resourced in terms of response).

Though training is the regular staple of most leadership programs, a word of caution is needed. There needs to be clarity as to what skills the leaders wish to acquire. Literacy may be a vital skill for the Western-style policing techniques involving witness statements, reports, directives, guidelines, and the like, but it is not so crucial in an oral tradition. Nor must the illiteracy of local law enforcement leaders be read as inadequacy; they may be excellent at negotiation, discernment, judgment, conflict resolution, and the other social skills often associated with local law enforcement. In other words, they may be well educated in the local values and skills necessary for catching thieves, bringing them to justice, and settling disputes in a way that brings resolution, whether through compensation, restoration, or punishment. Where they may need help is in understanding the limits of the constitution and law on their methods of arrest and investigation and records. The Uganda Taxi Operators and Drivers Association is trained in relevant driving/vehicle laws and methods of arrest by the police. Likewise, leaders can be trained to provide legal information and guidance or to improve their mediation and conflict resolution skills for civil disputes (as has been done in Sierra Leone with paralegal NGOs).

**Resolving intergroup disputes.** Typically, nonstate providers operate in small areas, which means disputes and crimes are sometimes likely to cross borders and bring groups face to face

with neighboring providers. At the ethnic level, this is potentially dangerous, and one ethnic group's perpetrator can become another group's victim—justice to one group might be discrimination to another. Given that law enforcement and justice groups have no fixed boundaries regarding geography or roles, conflict with other groups is a real possibility. In such a case, some intergroup dispute resolution mechanism would help as a forum for exchange of information, standardization of procedures, and screening of members.

In cities, at least, rarely are there simple, clear divisions along ethnic lines. Prolonged conflict mixes together ethnic groups through flight and migration. Old ethnic/clan enclaves are eroded. Yet heterogeneous communities may then lead to heterogeneous solutions of social organization. It may be that inevitably, the patrol of young men at night is mixed, or that inter-ethnic disputes are resolved by ethnically mixed panels. In Southern Sudan, I observed a case referred to the County Customary Court of “fighting” between an “Arab northerner” and a “southern Sudanese.” Because the case was politically sensitive, the

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mixed court was deemed better suited than the magistrate's court to resolve the conflict according to the values of the complainants and involved communities. The key is that there is a mechanism in place that can resolve disputes between individuals that cross boundaries or disputes between neighboring or competing policing groups.

***Strengthening existing links between state and nonstate.*** In advocating support to nonstate actors providing an acceptable service that has local backing, I am not advocating abandoning the state providers. Both should be supported to work to their strengths. In fact, the best entry point to supporting nonstate actors may well be where they have existing links with the state. I say this because that speaks of mutual recognition and respect and overcomes potential rivalry. It also addresses the point that neither state nor nonstate should be expected to do it all, and each can benefit from the resources and skills of others. Encouraging state-nonstate links also guards against that autonomy that allows agencies to misbehave and underperform. It makes sense to help those who know how to work together and share intelligence and resources. There are examples in the field of a degree of successful collaboration of local informal policing and state policing. For example, in Malawi and Sierra Leone, nonstate paralegals are linked to and supervised by lawyers and monitored by community boards. They tackle legal issues by themselves or by working with customary chiefs. In Kenya, to curtail cattle rustling, two communities decided to form a joint security system. With the help of some NGOs and in collaboration with the local leaders, they selected a commandant and an assistant and resolved to hire five Kenyan police reservists. Donors provided a jeep, uniforms, boots, radios and batteries, and even a small salary. The reservists work alongside troops employed by large-scale ranchers to repel cattle raiding. Attacks by Samburu and Isiolo have declined markedly. Because they are well provided for, the Home Guards have not been tempted to use their arms to raid the community but instead to protect it. The police also have a



radio connection with the Home Guards, and the government provides daily monitoring of the guns and ammunition issued them.

Several methods to strengthen links might be considered:

- ❖ Nonstate policing groups might have a dedicated police officer assigned to them as a link/mentor.
- ❖ Successful groups could entertain members of other groups to demonstrate methods.
- ❖ Independent local forums could be established that bring police and courts together with vigilance groups, taxi associations, customary chiefs, police forums, and local security providers (and perhaps users as well) to share problems and solutions concerning crime/disorder and relationships between law enforcement and justice actors.
- ❖ Justice links would be more beneficial if nonstate actors registered and recorded decisions reached and there was a mechanism and right of appeal to higher courts, which may be either state or nonstate.

Should links be forged where they do not already exist? The concept of sharing and cooperation is positive, but motivation fueled by mistrust and suspicion is to be avoided. Local people quickly report whether the local policing provider is misbehaving—in Rwanda, they readily responded, using a telephone hotline. It must be remembered that local groups are visible and find it hard not to be locally accountable to some degree. What might be more relevant is to keep an eye on any police unit

charged with “supervising” local actors. Forced links can have their problems.

**Building Area Networks.** From strengthening links, the next step is to consider integration into a security network (so-called nodal governance).<sup>6</sup> This brings together the multiplicity of authorizers and providers of policing. Given the experience of Community Police Forums in Africa where police show a preference for dominating and not taking as credible recommendations from the public of crime priorities, it might be worth thinking carefully before allowing the police to chair such networks.

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An example of an area network in practice is Cape Town, South Africa. The Cape Town Partnership is an organization established and controlled by the city council and business community to provide policing in the city’s central business district. Private security guards patrol the area and secure public spaces in the city center. They maintain contact with the city police control room by radio and also supervise the area’s closed circuit television. Though the example involves commercial security, it is possible to duplicate the principles across the noncommercial sector.

Integrating disparate groups into a single network is, of course, problematic because issues regarding skills, roles, availability, authority, legality, legitimacy, and coordinating processes abound. Everywhere in the world, real police treat with contempt the amateur

local/metropolitan cops. Herbert Wulf identifies two key issues facing mixed networks.<sup>7</sup> The first is the problem of legitimization, given the competitive nature of legitimation. Second is the problem of apportioning authority so as to avoid disputed sovereignties and yet to achieve a clarity of functions. His solution is to hold fast to two principles—namely, subsidiarity for practice and supremacy for norms. The *subsidiarity principle* means that for any task, the lowest level should be the starting point. Only when that level is not capable or suitable should a higher state level undertake the task. Concerning supremacy in norm setting, it should be top-down, so that norms of a higher level prevail over those of a lower level.

**only as nonstate and state raise their standards will both sides increase their respect for, and trust in, one another**

As regards assigning roles within networks, the principle might well be specialization. Too often the state police face overload. They have taken on additional roles within the community (for example, problem-solving and mediation) to the point where their limited numbers are stretched even further and the skills required of them multiply. A minimalist policing approach calls for the police to intervene only when there is criminal (or perhaps only serious criminal) activity and then to do so using their legal powers and the criminal justice system—in other words, confining police to what they are trained and resourced to do (and want to do).<sup>8</sup> The rest can be outsourced to local/nonstate providers drawing upon their expertise of local knowledge and conciliatory processes and

upon their local availability and legitimacy. The focus of this approach is clarifying roles according to skills so that all in the network are clear about what they can individually contribute and what they can realistically expect from others. Ken Menkhaus calls it a “negotiated division of labor.”<sup>9</sup> When providers concentrate on what they do best, it only furthers their legitimacy.

***Establishing Oversight Framework.*** A degree of predictable and uniform practice could be achieved through establishing universal standards and practical assistance with oversight to see these standards are upheld. It is important to develop an overarching framework of security and justice standards to guide the performance, procedures, jurisdictions, and interventions of nonstate actors. There needs to be a shared model of regulation and accountability. Only as nonstate and state raise their standards will both sides increase their respect for, and trust in, one another and will both gain the support of the people.

Like leaders, groups also can be included in accreditation programs that recognize demonstrable knowledge and skills. It could offer a degree of legitimacy to the nonstate actors and opportunities to monitor and improve their performance—such as occurs in Malawi and Sierra Leone, where nonstate paralegals are supervised by lawyers and monitored by community boards.

Accredited nonstate groups that sign up to a framework of standards could also be held accountable by citywide structures. Across an area/city, a central policing and justice authority could play a supervisory and coordinating role. It would receive reports of threatening activity, request a response from the most suitable/available policing group, and monitor it to see if the response is

adequate or whether there is a need for a more specialized response that the state police might be able to offer.

The postconflict environment is one of a disrupted social order and a severely depleted (and probably discredited and historically corrupt) state police. In Liberia in 2003, for instance, efforts to locate former police officers proved difficult, and most of those who were located were deemed to be too old or undereducated or to have unacceptable human rights records. When the process was over, Liberia had only 786 police officers, and the authorities were forced to call for volunteers. Again, in Rwanda following the genocide and civil war, it was found that the police had been largely swept into the Congo forests and their material resources largely destroyed.

Commonly, states and donors have worked together to seek to reform the police into a democratic and efficient agency, with varying results. This approach is understandable, but it does not address the central problem that even if the reform is successful, the emerging state police force is rarely going to be provided the financial and human resources to provide a nationwide law enforcement service. Against this background, there is a strong case for reviewing the role that nonstate law enforcement may be able to offer alongside the state agencies. Too often, it has been assumed that all such groups are violent and discriminatory and beyond reform, or that they constitute a group of actors that are unprogrammable.

This article has sought to argue that developing law enforcement capacity in postconflict communities is achievable. It is *not* achievable by expecting the state to provide the entire service; there has to be the use of nonstate actors. This is not straightforward. They hold risks, but they also hold potential. Done in the right way, acceptable nonstate actors can have their performance enhanced to the benefit of all. They are as reformable as the state law enforcement services. They should be utilized if we are serious about providing fair and sustainable justice and security for all. **PRISM**

## Notes

<sup>1</sup> Department for International Development (DFID), *Non-State Justice and Security Systems* (London: DFID, 2004); Organisation for Economic Co-operation and Development (OECD), *OECD DAC Handbook on SSR: Supporting Security and Justice* (Paris: OECD, 2007); Danish Institute for International Studies (DIIS), *Justice and Security—When the State Isn't the Main Provider*, DIIS Policy Brief (Copenhagen: DIIS, December 2010); Ewa Wojkowska, *Doing Justice: How Informal Justice Systems Can Contribute* (Oslo: United Nations Development Programme, December 2006).

<sup>2</sup> Alfred Sebit Lokujji, Abraham Sewonet Abatneh, and Chaplain Kenyi Wani, *Police Reform in Southern Sudan* (Ottawa: North-South Institute, June 2009), 12, table 3.

<sup>3</sup> Institute for Security Studies (ISS), *Peacekeeping and Post-conflict Criminality: Challenges to the (Re-) Establishment of Rule of Law in Liberia*, ISS Paper 190 (Pretoria: ISS, July 2009), 7, table 1.

<sup>4</sup> Cherry Leonardi et al., *Local Justice in Southern Sudan*, Peaceworks 66 (Washington, DC: United States Institute of Peace, October 2010).

<sup>5</sup> Ibid., 74.

<sup>6</sup> Jennifer Wood and Clifford Shearing, *Imagining Security* (Cullompton, UK: Willan, 2006).

<sup>7</sup> Herbert Wulf, *Challenging the Weberian Concept of the State: The Future of the Monopoly of Violence*, Australian Centre for Peace and Conflict Studies (ACPACS) Occasional Paper 9 (Brisbane: ACPACS, 2007).

<sup>8</sup> Monique Marks, Clifford Shearing, and Jennifer Wood, “Who Should the Police Be? Finding a New Narrative for Community Policing in South Africa,” *Police Practice and Research* 10, no. 2 (April 2009), 145–155.

<sup>9</sup> Ken Menkhaus, “Local Security Systems in Somali East Africa,” in *Fragile States and Insecure People: Violence, Security, and Statehood in the Twenty-first Century*, ed. Louise Andersen, Bjørn Møller, and Finn Stepputat (New York: Palgrave Macmillan, 2007).